

1982 WL 189360 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 9, 1982

\*1 Mr. John Harleston  
Staff Counsel  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

Dear John:

I am writing in response to your request for an Attorney General's opinion on the South Carolina Administrative Procedures Act [South Carolina Code of Laws, §§ 1-23-10 et seq., 1976, as amended]. Please accept my apology for the delay in response. You requested an interpretation of the validity of incorporation by reference of federal regulations within state regulations and the effect of the amendment or repeal of such federal regulations subsequent to their incorporation. I have enclosed a prior opinion of this office dated November 6, 1978, issued by Frank K. Sloan, Deputy Attorney General. This opinion concludes that any incorporation by reference of outside materials in a rule or regulation must make specific reference to the date of the edition of the material to be incorporated.

Incorporation by reference of federal regulations and state regulations is valid <sup>1</sup>. However, when a referenced federal regulation is amended or repealed, the corresponding state regulation will not automatically change. Section 1-23-10 provides that:

(b) prior to the promulgation, amendment or repeal of any regulation, an agency shall:

(1) give at least thirty (30) days notice of the intended action by publication of a notice in the state Register . . .

The corresponding state regulation will not automatically change because § 1-23-10 makes it mandatory for an agency to offer public notice and publish changes of its regulations in the State Register before a regulation is amended or repealed. Although the language of the state regulation will remain unchanged under your proposal, the substantive requirements of that regulation would be amended or repealed when the federal regulation is amended. Therefore, although the amended federal regulation may be incorporated by reference by the agency any change must be promulgated pursuant to § 1-23-110.

South Carolina has adopted with some modification the revised model State Administrative Procedures Act as approved by the National Conference of Commissioners on Uniform State Laws in 1961. On page three (3) of the comments of that act it is noted that one of the major principals embraced in the act is 'assurance of proper publicity for all administrative rules.' South Carolina's procedures for notice and publication of any amendments or changes to regulations satisfies this goal.

In conclusion, incorporation by reference of federal regulations and state regulations is permissible, however, when referenced federal regulations are amended or repealed, the corresponding state regulations will not automatically change.

Very truly yours,

Edvin E. Evans  
Senior Assistant Attorney General

Footnotes

<sup>1</sup> See, SOUTH CAROLINA EDITORIAL STANDARDS MANUAL (1977), p. 18.

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